



# **North Carolina General Assembly**

## **ENVIRONMENTAL REVIEW COMMISSION**

### **MINUTES**

March 18, 2010

10 a.m.

Room 544

Legislative Office Building

### **Welcome and Attendance**

The Environmental Review Commission of the North Carolina General Assembly met Thursday, March 18, 2010 in Room 544 of the Legislative Office Building. Co-Chairman Lucy Allen presided.

Attending the day's Commission meeting with Chairman Allen was Co-Chairman Dan Clodfelter, Co-Chairman Pryor Gibson, Senator Katie Dorsett, Senator Ellie Kinnaird, Senator A. B. Swindell, Advisory Member Senator Fletcher Hartsell, Representative Cullie Tarleton, Representative Ruth Samuelson, Representative Edith Warren, Representative Larry Womble and Advisory Member Representative Johnathan Rhyne. Staff present were Senior Commission Counsel Jennifer McGinnis, Senior Commission Counsel Jeff Hudson, Commission Counsel Susan Iddings, Commission Counsel Tim Dodge, Commission Analyst Jennifer Mundt, Research Assistant Mariah Matheson and Commission Assistant Jessica Kozma Proctor.

The meeting was promptly called to order at 10 a.m.

Co-Chairman Allen asked for any introductory comments from members. She then asked for any changes to the December 15, 2009 minutes. Hearing none, she asked for a motion to approve. The motion was made by Representative Tucker, and seconded by Representative Tarleton. Minutes were approved by unanimous vote.

Ms. McGinnis was recognized by the Co-Chair to review the day's agenda. Following this, Mr. Edward Finley, Chairman of the North Carolina Utilities Commission was called to update the Commission on current compliance with the North Carolina Renewable Energy Efficiency Portfolio Standards (Senate Bill 3). Mr. Finley approached the podium and thanked Co-Chairman Allen and the Commission for their continued interest in the legislation.

## **Report on the implementation of the North Carolina Renewable Energy and Energy Efficiency Portfolio Standards and subsequent proceedings**

Mr. Finley used a PowerPoint presentation to aid his report. This presentation is attached to the minutes and may also be found on the Commission's webpage at [www.ncleg.net](http://www.ncleg.net).

Reviewing highlights of Senate Bill 3, Mr. Finley pointed out that upon enactment in 2007, the State was the first in the southeast to adopt a renewable portfolio standard. In this legislation Renewable Energy Portfolio Standards (REPS) may be met through combination of renewable energy generation and energy efficiency savings. REPS compliance costs are recovered through a rate rider, Mr. Finley reported, and the legislation further provides the "timely cost recovery for new demand-side management programs and energy efficiency measures by electric public utilities, including the opportunity for appropriate utility incentives."

He reviewed past reports to the General Assembly and what compliance requirements are mandated by the legislation. Mr. Finley then reviewed "issues in interpreting Senate Bill 3." These issues as well as conclusions regarding these issues may be found on pages seven through 13 of his report.

Moving to Page 14 of the report, Mr. Finley reviewed "REPS Compliance by the Electric Power Suppliers." In this segment he discussed mandates for public utilities. These utilities are:

- Required to file an annual REPS compliance plan, a forward looking forecast of its REPS requirement and plan for meeting that requirement;
- Mandated to file an annual REPS compliance report, looking back at RECs earned or purchased and energy savings actually realized during the prior calendar year;
- Obligated to recover REPS compliance costs through the rate rider and;
- Allowed to recover co-sets of new DSM and EE programs through rate riders.

Mr. Finley thanked the Commission again for their time and interest. Co-Chairman Allen called for discussion. Representative Samuelson was recognized by the Co-Chairman and asked Mr. Finley to return to Page 13 of his report. She then said that it "seems like when I read this that even if systems are less efficient they get priority, and that can cause us to hit the price cap without having the overall purpose of the renewable." Mr. Finley answered that this "was one way of looking at it," and added that he felt the General Assembly set this issue "aside" because of certain reasons like this.

Representative Tarleton was recognized and thanked Mr. Finley and their Co-Chairman. He asked "if a constituent asked 'are North Carolina utility companies on track to accomplish the goals of Senate Bill 3,' could I be comfortable answering 'yes' to that." Mr. Finley answered that he "could answer yes but how comfortably would be a different matter." He then explained that new tenets of the legislation begin this year through 2012, including a solar requirement, and that utilities will "clearly" meet these requirements during the legislation's early implementation years.

Co-Chairman Gibson was recognized by Co-Chairman Allen. He cautioned the Commission that he was “not going to show (my) usual goofiness.” The Co-Chairman praised the utilities commission and its staff for their work to assist in the implementation of Senate Bill 3. He then discussed the bill from the vantage point of a legislator: “let me tell you sir, our intention was to make as good a document and policy as we possibly can.”

Progress Energy Carolinas lobbyist Kathy Hawkins was asked to assist in finding additional information regarding Progress Energy’s solar facility for the Commission. She agreed to do so.

Co-Chairman Clodfelter was recognized. He began saying the quickest way to drive down costs is to “quickly build up supply chains.” He added the he would encourage our utility commission to “not be too conservative in the approval of riders.”

As discussion ended, Co-Chairman Allen thanked Mr. Finley, noting that his report was “a very understandable report about a very un-understandable subject.”

**Quarterly reports by the Environmental Management Commission (EMC) as to its operations, activities, programs and progress for the periods from October 2009 through December 2009 and January 2010 through March 2010 (G.S. 143B-282(b)); and update on the status of the rulemaking process to implement the nutrient management strategy and the turbidity strategy for Upper Falls Lake**

Co-Chairman Allen recognized Mr. Stephen T. Smith, Chairman of the Environmental Management Commission. Two reports were submitted for the record. Both reports are attached to the minutes and may also be found on the Commission’s webpage located at [www.ncleg.net](http://www.ncleg.net). Mr. Smith thanked the Commission and began his report.

Reviewing the activities of the EMC during the last quarter of 2009 regarding nutrient control strategies for Falls Lake, Mr. Smith reported that on November 19, 2009, the EMC approved the Falls Lake “calibrated nutrient response model” for use by the Division of Water Quality (DWQ). Prior to its approval, DWQ held a series of stakeholder meetings, including one in August, 2009 to discuss a new timeline and requirements as charged by the legislation enacted by 2009 General Assembly.

Mr. Smith then briefly reported on the progress of nutrient management strategies for the B. Everett Jordan Reservoir. This included rules being approved by the EMC in 2008, with review by the General Assembly in 2009. These rules became effective August 11, 2009. Currently, requirements of the rules and outreach activities are underway by DWQ.

Reporting on the activities of the EMC during the first quarter of 2010, Mr. Smith reported that because of legislation passed in 2005 (S. L. 2005-190) and then revisited through Senate Bill 1020 during the 2009 General Assembly, the EMC has until January 15, 2011 to adopt final rules. Continuing, Mr. Smith reported that on March 11, 2010 the EMC approved draft rules to proceed to public hearing and comment regarding Falls Lake. Public hearings are scheduled for April 2010, with a public comment period to follow during the spring and summer of 2010. A report from hearing officers and recommendations to the EMC are scheduled for the November 2010 meeting.

Co-Chairman Allen thanked Mr. Smith for his report and called upon Commission members for discussion. Co-Chairman Gibson asked about a potential idling and boiler standard, and whether such a standard “was underway.” Mr. Smith answered that “that’s what I’m told.” Co-Chairman Gibson followed up saying that concerning the diesel standard “(the State), needed a redline on what’s going on with other states like Georgia and Tennessee.” He continued saying he was not “excited” about doing an idling standard without knowledge of neighboring states and their potential participation in such a standard.

The rule process was reviewed. Co-Chairman Gibson commented that he “cannot see people having a heart attack” under his tenure and that he “cannot imagine doing a diesel rule without all understanding” of why the standard is necessary.

Before ending his report, Mr. Smith reviewed concerns of interest for this year’s legislative session. Co-Chairman Allen thanked Mr. Smith for his report.

### **Annual report on activities associated with the Sedimentation Pollution Control Act of 1973**

Co-Chairman Allen recognized Mr. James D. Simons, the Director of the Division of Land Resources and State Geologist (DENR) to present to the Commission. Mr. Simons used a PowerPoint presentation to assist with his report. This presentation may be found attached to the minutes or at the Commission’s webpage at [www.ncleg.net](http://www.ncleg.net). In addition, a resolution by the sedimentation control board may also be found attached to the minutes and uploaded to the Commission’s webpage.

Mr. Simons reviewed sites and personnel for his program, noting that there are 61 positions statewide to implement the sedimentation program. Among activities for the fiscal year of 2008-2009, he reported:

- There were 3,260 erosion and sedimentation control plan reviews;
- Express permit reviews decreased to 434, from 584 in the previous fiscal year;
- 19,844 sedimentation site inspections occurred, with 557 notices of violation and 60 enforcement case referrals.

In the same fiscal year, 45 penalties were issued from 60 referrals for further enforcement. Mr. Simons reviewed amendments, including that “if injunctive relief is sought pursuant to the (act), notice should be filed with the Clerk of Superior Court in accordance with N.C. General Statute 1-177;” that the expiration date of approved erosion and sedimentation control plans is extended until after December 31, 2014 and that permanent rules for the Falls Lake Watershed be developed by December 31, 2011.

Noting some regulatory issues, Mr. Simons discussed problems with bankrupt and abandoned sites and concern about development on steep slopes on mountainous ranges. Among budgetary issues, Mr. Simons said that like all of the State, funds were “significantly” drained from the previous year. Due to the economic downturn, four positions were eliminated to meet budget reductions, with five additional positions still vacant. He also noted a large discrepancy in the per acre cost of reviewing erosion and sedimentation control plans between State and local authorities. Minimal discussed ensued, and Co-Chairman Allen thanked members, staff and visitors for their participation in the day’s meeting.

## **Adjournment**

She then adjourned the meeting at 12:54 a.m.

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Co-Chairman Lucy Allen  
Presiding

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Co-Chairman Pryor Gibson

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Jessica Kozma Bennett  
Commission Clerk